

November 11, 2021

The Honorable John P. Cronan
United States District Judge, Southern District of New York
500 Pearl Street, Room 1320
New York, NY 10007

Re: *Moshell v. Sasol Limited*, No. 20-cv-01008-JPC (S.D.N.Y.)
Joint Letter re: Remaining Categories of Disputed Documents
and Request to Adjourn Discovery Conference

Dear Judge Cronan:

Further to the Court's November 9, 2021 Order [ECF No. 186], the parties met and conferred on November 10 and 11 concerning the parties' dispute related to class certification discovery. We jointly write to inform the Court that the parties have reached agreement on all but one category of documents, and have further agreed upon a process for potential resolution of the sole document category that remains potentially at issue. Based on these developments, the parties respectfully request that the Court adjourn the conference presently scheduled on Monday, November 15, 2021 at 1:30pm ET to allow the parties to complete the agreed-upon protocol for the sole document category that remains in dispute.

Category #1. Plaintiffs moved to compel the production of all internal correspondence and correspondence with auditors related to the Sasol North American Operations SHE Incident Investigation Report dated February 10, 2020 ("February 2020 Report"). Plaintiffs have agreed to withdraw this request in connection with class certification discovery, only.¹

Category # 2. Plaintiffs moved to compel the production of all original, draft, subsequent versions, auditor support packages, and internal correspondence and correspondence with the auditors related to the Management Report: Sasol North American Operations (SNAO) Lake Charles Chemical Complex (LCCC) Environmental and Safety Incident Audit dated July 31, 2020 ("July 2020 Report"). After meeting and conferring, the parties have agreed upon the following narrowed scope of production in connection with class certification discovery, only: all original, draft, and subsequent versions of the July 2020 Report.

Category # 3. Plaintiffs moved to compel the production of all original, draft, subsequent versions, and final internal and external audit reports related to the LCCP commissioned between April 2019 and the present. The parties have agreed upon the following process to determine if they can resolve this category of disputed documents without burdening the Court for intervention:

- On or before Wednesday, November 17, 2021 at 5:00pm ET, Defendants will provide to Plaintiffs a declaration from the Senior Manager Audit Services, Chemicals

¹ Plaintiffs continue to seek production of all documents described in Category # 1 and Category #2 in connection with merits discovery and Defendants reserve all rights to object. Both parties reserve all rights with respect to the production of documents in connection with merits discovery.

Americas, Sasol Assurance Services (“SAS”) setting forth a list of LCCP-related audits commenced by SAS during the period between January 1, 2019 and December 31, 2020 (the “SAS List”).

- By Friday, November 19, 2021 at 5:00pm ET, Plaintiffs will identify the specific audits on the SAS List that Plaintiffs request for production in connection with class certification.
- If any disputes remain with respect to the audits requested by Plaintiffs, the parties will meet and confer early in the week of November 22, 2021.
- After completing the meet and confer process, the parties will jointly submit a letter to the Court either (i) affirming that the dispute has been fully resolved and setting forth the timetable for production and proposed deadline for Plaintiffs’ filing of their reply in support of their motion for class certification; or (ii) specifically identifying any remaining categories of disputed documents.

Finally, the Parties were also able to resolve their dispute concerning Defendants’ designation of certain documents produced in connection with class certification on an attorneys’ eyes only (“AEO”) basis. Defendants have agreed to re-produce the at-issue documents without the AEO designation. Plaintiffs have agreed to confirm in writing that the materials will be shared solely with experts and consultants retained by Plaintiffs in connection with this litigation who agree to maintain the documents as “Confidential” under the Protective Order [ECF No. 80]. The parties agree that nothing in Plaintiffs’ agreement will be construed to require Plaintiffs to prematurely disclose their expert witnesses and consultants, and the Parties agree that the at-issue documents and all discussions of the same will continue to be filed under seal in the first instance, subject to Court approval.

Based on the foregoing, the parties hope that judicial intervention with respect to this dispute may be unnecessary. Accordingly, the parties respectfully request that the Court adjourn the November 15, 2021 conference to allow time for the parties to complete the agreed-upon protocol for Category #3. Thereafter, should any disputes remain, the parties will promptly raise them with the Court.

Respectfully submitted,

The request is granted, and the conference previously scheduled for November 15, 2021 is adjourned. The parties shall follow the process outlined in the letter to resolve any remaining disputes with regard to Category #3. The parties shall submit the proposed status letter by December 1, 2021. The Court also grants the motions to seal the previously filed unreacted letters. The Clerk of Court is respectfully directed to close the motions pending at Docket Numbers 179, 181, and 187.

SO ORDERED.

Date: November 12, 2021

New York, New York



JOHN P. CRONAN
United States District Judge

By: /s/ Steve W. Berman

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